Other Penalties -
Discussion Paper #5

February 7, 2003

WCB Workers' Compensation Board
Alberta

Introduction

Penalties are under review at the Workers Compensation Board – Alberta (WCB). With the enactment of Bill 26, the authority to levy penalties has been brought into today's economic reality. Under old legislation, the maximum fine the WCB could levy was $500 for each day or part of a day on which the contraventions occurred. With changes due to Bill 26, the maximum fine is now $25,000 for each contravention or for each day or part of a day on which the contravention occurs and continues. See Appendix A for section 152.1 of the Worker's Compensation Act (Act).

Over the last decade, our use of financial penalties has been limited. Our preferred approach is to work with employers to demonstrate business value and achieve voluntary compliance. Unfortunately, there are a group of employers who do not respond to this approach and penalties are a means to change employer behavior and encourage greater accountability of employer responsibilities.

Sharing our implementation plan for our new penalty structure and ensuring our stakeholders have the opportunity for review and feedback is important to us. This discussion paper puts forth our proposals for remaining penalty topics and provides opportunity for feedback.

Reporting of Insurable Earnings

Section 109 of the Act requires that persons who might be employers provide information to the WCB regarding the nature of business and payroll when requested to do so (see Appendix A for detailed section of the Act).

Reporting penalties are already in place and include late registration penalties, underestimating penalties, late filing penalties and pre-estimate late filing penalties (Please see Appendix B for more information on existing penalties). In addition, WCB has various means to educate potential employers of their responsibilities. These include:

- Letter mailed to newly incorporated Alberta businesses
- Worker Handbook – pages 12 and 13 contain general information regarding WCB accounts, premiums and reporting requirements
- Employer Information Workshop – introduces employers to the fundamentals of workers' compensation
- WCB website – under "Employer" tab and topics of "Roles and Responsibilities" and "Publications for Employers"
- Field staff such as auditors and account managers inform employers of their responsibilities

The majority of employers complete the annual reporting process, provide information for industry and premium assignment and make records available for review. In some instances, employers will refuse to provide insurable earnings information. When it does happen, this lack of cooperation translates into additional costs that are shared by all employers. In the past, we have worked with employers to demonstrate the value of disability insurance and to encourage them to produce the information necessary. Despite this, we have found existing reporting penalties are not a strong enough deterrent for some employers.

As such, we are suggesting a moderate penalty of no less than $500 per employer to recover costs and expenses associated with tracking down reporting information. This would cover site visits, additional field staff time and other expenses. Communication to employers will be on a case-by-case basis. The focus is to inform offending employers that if they are required to register with WCB and they refuse to cooperate, they will be faced with costs over and above their premium obligation (i.e. reporting penalties, late registration penalties, interest charges etc.)

Records in Alberta

Section 108 requires employers to maintain accounting records in Alberta (see Appendix A for detailed section of the Act).

The vast majority of employers either base their operations in Alberta or maintain records in the province. A small number of employers, particularly those that conduct business across Canada or who maintain head offices outside of Alberta, see benefit in a centralized accounting system and do not house their accounting records in Alberta. Review of records for this group is normally undertaken through a notarized statement of audit (called a Certified Statement).

While unusual, there are situations where it is important to perform a complete premium audit and physically inspect accounting records. In these instances, auditors are required to travel out-of-province to conduct the audit and will incur travel and other expenses. Currently, these expenses are passed on to all employers. It then becomes an issue of fairness since all other employers are bearing the cost of audits for these out of province employers.

If the transportation of records to Alberta is not feasible, we are proposing that employers who house records outside Alberta be billed for audit travel expenses to cover the higher costs of an out-of-province audit.

Widespread communication is not required as the majority of employers are based in Alberta and keep records here. Communication should focus on employers who may require an out-of-province audit. We would simply advise that if records are not

available in Alberta for the next audit, then they are either required to transport the records to Alberta or will be subject to a penalty. In addition, customer service staff will advise any new employers of the requirements to maintain records in Alberta.

Posting of Notices

Section 145 states that employers must post notices as required by the Board (see Appendix A for detailed section of the Act). An example of such a notice is the "*If you are injured at work…1-2-3 Poster*". The purpose of this is to ensure employers advise all workers about the coverage they have and benefits to which they are entitled under workers' compensation coverage. Presently, the WCB has neither required nor ordered employers to post any notices.

While it is important that employers keep their workers informed, whether or not notices are posted is difficult to monitor and enforce. The only clear method of monitoring this is to visit the premises of each and every Alberta employer. Field staff such as Auditors and Account Managers often visit employer's premises; however, given the number of field staff available, the majority of Alberta's over 100,000 employers will not have the benefit of a personal visit from a WCB representative.

Act changes now allow the WCB to levy a penalty for failure to post notices. We believe that a focus on education is the best approach to encourage changes in employer behaviour. For this, we can rely on existing channels of communication such as articles in Insight, updates to the website/publications and WCB workshops. However, in cases where the WCB has ordered an employer to post a notice, a penalty will be levied for non-compliance. We are suggesting a moderate penalty of no less than $500 per employer.

Maintaining Separate Statements for Each Industry

Section 110 requires that employers maintain separate statements for each industry in which they are conducting business (see Appendix A for detailed section of the Act).

Currently, when an employer is assigned more than one industry classification, they are advised that separate insurable earnings records must be kept for all industries. If, however, the employer refuses to separate earnings for each business, the WCB may assign a single classification based on the business that would have the highest premium rate. The rationale here is that the employer has control over the outcome and, through their actions, is making a choice to not separate the risks. As such, it would be wrong from an insurance perspective to underwrite the higher risk in a lower risk category and to essentially subsidize the rate. Therefore, the entire operations must be charged at the higher rate.

Act changes now allow the WCB to levy a penalty for failure to separate insurable earnings. The current process already has repercussions for not separating earnings in that employers may be subject to higher premiums. There are only about 5000 employers or 5% of all WCB accounts that are active in more than one industry. Given this fact, the number of employers who do not report correctly is relatively small. It is to the employer's advantage and within their control to maintain separate records. The potential higher premium cost is enough of a motivator for most employers to comply. An additional penalty is not expected to have a greater impact on employer behaviour than the existing process. As with other existing penalties, the current process is working and we recommend not introducing another penalty at this time.

Details of Penalty Program

Given the nature of these violations, we anticipate that penalties will not be levied frequently. When necessary, however, the area responsible will note the violation and make a recommendation to management for approval to manually levy the penalty. This penalty would be billed on the employer's monthly statement along with other billing items. The monthly statement will detail specific information regarding the penalty levied, i.e. amount and type of fine, etc.

As with other decisions made at the WCB, employers will have an opportunity to request a review of any penalties levied on their accounts. They would follow the normal dispute resolution process with initial contact to a supervisor or manager followed by review at the Assessment Review Committee. The final level of appeal is the Appeals Commission.

Penalty Escalation

As already mentioned, experience has shown that these violations are not common. As such, the combination of an education process and penalty program should be effective in motivating a change in behaviour. For all employers, these penalties are preventable and within their means to control.

If specific employers consistently refuse to comply, the program could add a provision for penalty escalation in the future. While in practice escalation does not seem likely, this approach is consistent with respect to how we deal with "repeat offenders". Proposal for escalation may include raising the penalty amount per incident.

Stakeholder Feedback

Sharing our plans for the new penalty structure and ensuring our stakeholders have the opportunity for review and feedback is important to us. Information on the general administrative penalty program has already been posted on our website to initiate the

process. A stakeholder session introducing the general topic of penalties was also conducted on November 6, 2002. Two additional workshops, one in Edmonton and one in Calgary, are planned for the end of February 2003. The focus of the workshops will be to present the WCB model for a penalty program and gather feedback from stakeholders. Once stakeholder views have been considered, implementation of the program will commence.

Next Steps

- Collection of stakeholder feedback – February to April 2003
- WCB approval of penalty program – June 2003
- Communication of penalty program – Third quarter 2003
- Implementation of penalty program – Third quarter 2003

Appendix A – Sections of Workers' Compensation Act

Section 152.1 (Bill 26 changes effective January 1, 2003):

Administrative penalty

152.1 (1) Where the Board is of the opinion that a person has contravened section 19, 33(1), 87, 103, 105, 106, 108, 109, 110, 138, 139, 140, 140.1, 145, 147(3) or 151.1, the Board may by notice in writing given to that person require that person to pay to the Board within the time specified in the notice an administrative penalty in respect of each contravention in the amount set out in the notice.

(2) A person who contravenes a provision referred to in subsection (1) is liable for the administrative penalty for each day or part of a day on which the contravention occurs and continues.

(3) An administrative penalty may not exceed $25 000
(a) for each contravention, or
(b) for each day or part of a day on which the contravention occurs and continues,
as the case may be.

(4) A notice of administrative penalty may not be issued more than 2 years after the later of
(a) the date on which the contravention to which the notice relates occurred, and
(b) the date on which evidence of the contravention first came to the notice of the Board.

Section 109 (already in effect)

Persons who might be employers

109 The Board may require a person who, in its opinion might be an employer in an industry to which this Act applies, to prepare and deliver to the Board a statement signed by the person giving full particulars concerning the nature of the different types of work carried on by the person and any particulars required by the Board concerning the person's payroll or other matters pertaining to the person's work, and that person shall prepare and deliver the statement as prescribed by the Board.

Section 108 (already in effect)

Employers' records

108 An employer shall keep in Alberta in the form and detail required by the Board a careful and accurate account of all wages paid to the employer's workers and of any other features and particulars of the employer's operations the Board may require.

Section 110 (already in effect)

Separate statements for each industry

110 If the business of an employer consists of more than one industry, the Board may require of the employer separate statements under sections 103 to 109 as to each industry and the employer shall prepare and deliver those statements as prescribed by the Board.

Section 145 (already in effect)

Posting of notices

145 An employer shall post and keep posted in a conspicuous place on the premises where the work performed by the employer's workers is being carried on, and where they may be readily seen by the employer's workers, any notices the Board requires to be posted.

Appendix B – Penalty Rules as of January 1, 2000

Late Registration Penalties (LRP)

Legislation: Section 105 of WC Act (also section 13 of General Regulations).
Description: If an employer is operating in a compulsory industry under the Act, they must notify the WCB within 15 days of hiring workers (employer actually has 30 days before penalty is applied).
Penalty:

- A flat 10% will be charged on net premium owing.
- Interest will be charged daily between the worker start date plus 30 days to the actual date the information is received unless information received is within 30-day grace period.
- A minimum penalty of $15.00 per industry per year is levied.

Late Filing Penalties (LFP)

Legislation: Section 103 of WC Act.
Description: A LFP is applied if the employer hasn't reported their insurable earnings figures by the end of February each year. (We refer to this reporting period as the A300 period. A300 was the number of the form that was used to manually report insurable earnings originally).
Penalty:

- A flat 10% will be charged on net premium owing. This is calculated once we receive the actual insurable earnings for the previous year and the new estimate for the upcoming year.
- Interest will be charged daily between the deadline plus any grace days and the actual insurable earnings received date.
- A minimum penalty of $15.00 per industry (no 30-day grace period) is levied.

Underestimating Penalties (UEP)

Legislation: Section 14 of the General Regulations.
Description: A UEP is levied on the employer's account when their actual insurable earnings figure is more than 50% higher than what they had previously given as their latest estimate for the year. For example, the estimate on account is $100,000 and the employer's actual is 180,000. Employer could have gone up to $150,000 before a UEP would be applied. Penalty calculation would be: (difference between 180,000 (-) 150,000 = 30,000. (X) Rate/100 (X) 10% = UEP.
Penalty:

- A flat 10% is levied on the amount owing over and above the 50% leeway mark.

- Interest will be charged daily from December 31st to when we receive the figures on any amount owing.
- A minimum penalty of $15.00 per industry is levied.

Pre-Estimate Late Filing Penalty (PEP)

Legislation: Section 103 of WC Act.
Description: This penalty is levied by the WCB when an employer has not reported their final insurable earnings for the previous year by approximately the 3rd week in March. We have no reason to believe that the employer has ceased to operate and in prior years has had worker coverage in effect, we will levy an estimate for his workers based on prior year's estimate and automatically give him a PEP penalty for not reporting by the end of February.
Penalty:

- 1st time offenders will be pre-estimated at 150% + 10% PEP (minimum $15.00 per industry) with regular installments & daily interest charged from the date information was required to when pre-estimate levied.
- 2nd time offender (but actual insurable earnings for previous year was obtained eventually) will be pre-estimated at 200% + 10% PEP (minimum $15.00 per industry) with regular installments & daily interest charged from the date information was required to when pre-estimate levied.
- 3rd time offender (actual insurable earnings for previous year still outstanding) will be pre-estimated at 200% + 10% (minimum $15.00 per industry) with one installment only & daily interest charged from the date information was required to when pre-estimate levied.